

Administration of Donald J. Trump, 2017

Proclamation 9681—Modifying the Bears Ears National Monument

December 4, 2017

By the President of the United States of America

A Proclamation

In Proclamation 9558 of December 28, 2016, and exercising his authority under section 320301 of title 54, United States Code (the "Antiquities Act"), President Barack Obama established the Bears Ears National Monument in the State of Utah, reserving approximately 1.35 million acres of Federal lands for the care and management of objects of historic and scientific interest identified therein. The monument is managed jointly by the Department of the Interior's Bureau of Land Management (BLM) and the Department of Agriculture's United States Forest Service (USFS). This proclamation makes certain modifications to the monument.

Proclamation 9558 identifies a long list of objects of historic or scientific interest. It describes cultural resources such as ancient cliff dwellings (including the Moon House and Doll House Ruins), Moki Steps, Native American ceremonial sites, tools and projectile points, remains of single-family dwellings, granaries, kivas, towers, large villages, rock shelters, caves, and a prehistoric road system, as well as petroglyphs, pictographs, and recent rock art left by the Ute, Navajo, and Paiute peoples. It also identifies other types of historic objects, such as remnants of Native American sheep-herding and farming operations and early engineering by pioneers and settlers, including smoothed sections of rock, dugways, historic cabins, corrals, trails, and inscriptions carved into rock, and the Hole-in-the-Rock and Outlaw Trails. It also describes landscape features such as the Bears Ears, Comb Ridge, Cedar Mesa, the Valley of the Gods, the Abajo Mountains, and the San Juan River, and paleontological resources such as the fossil remains of fishes, amphibians, reptiles, and mammals, as well as dinosaur trackways and traces of other terrestrial animals. Finally, it identifies several species, including animals like the porcupine, badger, and coyote; birds like the red-tailed hawk, Mexican spotted owl, American kestrel, and turkey vulture; and plants such as the Fremont cottonwood, Abajo daisy, western sandbar willow, and boxelder.

The Antiquities Act requires that any reservation of land as part of a monument be confined to the smallest area compatible with the proper care and management of the objects of historic or scientific interest to be protected. Determining the appropriate protective area involves examination of a number of factors, including the uniqueness and nature of the objects, the nature of the needed protection, and the protection provided by other laws.

Some of the objects Proclamation 9558 identifies are not unique to the monument, and some of the particular examples of these objects within the monument are not of significant scientific or historic interest. Moreover, many of the objects Proclamation 9558 identifies were not under threat of damage or destruction before designation such that they required a reservation of land to protect them. In fact, objects described in Proclamation 9558 were then—and still are—subject to Federal protections under existing laws and agency management designations. For example, more than 500,000 acres were already being managed to maintain, enhance, or protect their roadless character before they were designated as part of a national monument. Specifically, the BLM manages approximately 380,759 acres of lands within the existing monument as Wilderness Study Areas, which the BLM is required by law to

manage so as not to impair their suitability for future congressional designation as Wilderness. On lands managed by the USFS, 46,348 acres are part of the congressionally designated Dark Canyon Wilderness Area, which, under the 1964 Wilderness Act, 16 U.S.C. 1131–1136, and the Utah Wilderness Act of 1984, Public Law 98–428, the USFS must manage so as to maintain or enhance its wilderness character. Approximately 89,396 acres of the USFS lands are also included in 8 inventoried roadless areas, which are managed under the USFS's 2001 Roadless Rule so as to protect their wilderness character.

A host of laws enacted after the Antiquities Act provide specific protection for archaeological, historic, cultural, paleontological, and plant and animal resources and give authority to the BLM and USFS to condition permitted activities on Federal lands, whether within or outside a monument. These laws include the Archaeological Resources Protection Act of 1979, 16 U.S.C. 470aa–470mm, National Historic Preservation Act, 54 U.S.C. 300101 *et seq.*, Bald and Golden Eagle Protection Act, 16 U.S.C. 668–668d, Endangered Species Act of 1973, 16 U.S.C. 1531 *et seq.*, Federal Cave Resources Protection Act of 1988, 16 U.S.C. 4301 *et seq.*, Federal Land Policy and Management Act of 1976, 43 U.S.C. 1701 *et seq.*, Migratory Bird Treaty Act, 16 U.S.C. 703–712, National Forest Management Act, 16 U.S.C. 1600 *et seq.*, Native American Graves Protection and Repatriation Act of 1976, 25 U.S.C. 3001 *et seq.*, and Paleontological Resources Preservation Act, 16 U.S.C. 470aaa–470aaa–11. Of particular note, the Archaeological Resources Protection Act specifically protects archaeological resources from looting or other desecration and imposes criminal penalties for unauthorized excavation, removal, damage, alteration, or defacement of archaeological resources. Federal land management agencies can grant a permit authorizing excavation or removal, but only when undertaken for the purpose of furthering archaeological knowledge. The Paleontological Resources Preservation Act contains very similar provisions protecting paleontological resources. And the Migratory Bird Treaty Act and Endangered Species Act protect migratory birds and listed endangered and threatened species and their habitats. Moreover, the BLM and the USFS were already addressing many of the threats to objects identified in Proclamation 9558 in their governing land-use plans before designation of the monument.

Given the nature of the objects identified on the lands reserved by Proclamation 9558, the lack of a threat of damage or destruction to many of those objects, and the protection for those objects already provided by existing law and governing land-use plans, I find that the area of Federal land reserved in the Bears Ears National Monument established by Proclamation 9558 is not confined to the smallest area compatible with the proper care and management of those objects. The important objects of scientific or historic interest can instead be protected by a smaller and more appropriate reservation of 2 areas: Shash Jáa and Indian Creek. Revising the boundaries of the monument to cover these 2 areas will ensure that, in accordance with the Antiquities Act, it is no larger than necessary for the proper care and management of the objects to be protected within the monument.

The Shash Jáa area contains the heart of the national monument: the iconic twin buttes known as the Bears Ears that tower 2,000 feet above the surrounding landscape and are considered sacred to the Native American tribes that call this area their ancestral home. Many of the significant objects described by Proclamation 9558 can be found throughout the Shash Jáa area. Ancestral Puebloan occupation of the area began during the Basketmaker II period at least 2,500 years ago, and it left behind objects such as pit houses, storage pits, lithic scatters, campsites, rock shelters, pictographs, and baskets, as well as manos and metates for grinding corn. Occupation dating to the Basketmaker III period, from approximately 500 to 750 C.E.,

left additional evidence of maize- and bean-based agriculture, along with pottery, bows and arrows, pit houses, kivas, storage rooms, and dispersed villages.

New waves of human settlement occurred around 900 C.E., when the Pueblo I period gave rise to large villages near Comb Wash, and 1050 C.E., when inhabitants from the Pueblo II period built expansive and complex multi-family dwellings. Around 1150 C.E., the dawn of the Pueblo III period, the area's inhabitants increasingly sought shelter in cliff dwellings and left behind evidence of an era of unrest. Several centuries later, the Ute, Paiute, and Navajo came to occupy the area.

East of the Bears Ears is Arch Canyon, within which paleontologists have found numerous fossils from the Permian and Upper Permian eras. Cliff dwellings are hidden throughout the canyon, and the mouth of the canyon holds the fabled Arch Canyon ruin, which spans the Pueblo II and III periods and contains pictographs and petroglyphs ranging from the Archaic to the historic periods.

Just south of Arch Canyon are the north and south forks of Mule Canyon. Five-hundred feet deep, 5 miles long, and decorated with alternating layers of red and white sandstone, these 2 striking canyons contain shelter-cliff dwellings and other archaeological sites, including the scenic and accessible House on Fire Ruin, which includes differing masonry styles that indicate several episodes of construction and use.

Perched high on the open tablelands above the south fork of Mule Canyon are the Mule Canyon ruins, where visitors can see exposed masonry walls of ancient living quarters and a partially restored kiva. The deep canyons and towering mesas of the Shash Jáa area are full of similar sites, including rock art, remains of single-family dwellings, granaries, kivas, towers (including the Cave Towers), and large villages primarily from the Pueblo II and III periods, along with sites from the Basketmaker and Archaic periods.

The Shash Jáa area also includes Comb Ridge, a north-south trending monocline that originates near the boundary of the Manti-La Sal National Forest, ends near the San Juan River, and contains remnants from the region's thousands of years of human habitation, including cliff dwellings, granaries, kivas, ceremonial sites, and the Butler Wash ruin, a world-famous Ancestral Puebloan ruin with multiple rooms and kivas. Comb Ridge also includes world-class examples of ancient rock art, such as the Butler Wash Kachina Panel, a wall-sized mural of San Juan Anthropomorph figures that dates to the Basketmaker period and is considered to be one of the Southwest's most important petroglyph panels for understanding the daily life and rituals of the Basketmaker people. Significant fossil sites have also been discovered in Butler Wash.

Just north of upper Butler Wash, the aspen-filled Whiskers Draw contains a series of alcoves that have sheltered evidence of human habitation for thousands of years, including Cave 7, the site where Richard Wetherill, as part of the Hyde Expedition in 1893, first identified what we know today as the Basketmaker people. The nearby Milk Ranch Point is home to a rich concentration of kivas, granaries, dwellings, and other evidence that Pueblo I farmers used this area to cultivate corn, beans, and squash.

The Shash Jáa area also contains the Comb Ridge Fossil site, which includes a trackway created by a giant arthropod (*Diplichnites cuithensis*), the first recorded instance of such a trackway in Utah. Also, the diverse landscape of the Shash Jáa area provides habitat for the vast majority of plant and animal species described by Proclamation 9558.

Finally, the Shash Jáa area as described on the accompanying map includes 2 non-contiguous parcels of land that encompass the Moon House Ruin, an example of iconic Pueblo-decorated architecture, which was likely the last occupied site on Cedar Mesa, as well as Doll House Ruin, a fully intact and well-preserved single room granary that is associated with an extensive agricultural area on the mesa top. These significant ruins are important examples of cultural resource objects that should remain within the monument's boundaries.

The Indian Creek area likewise contains objects of significance described in Proclamation 9558. At its center is the broad Indian Creek Canyon, which is characterized by sheer red cliffs and spires of exposed and eroded layers of Navajo, Kayenta, Wingate, and Cedar Mesa sandstone, including the iconic North and South Six-Shooter Peaks.

Also located within the Indian Creek area is the Canyonlands Research Center. Spanning lands managed by the National Park Service, BLM, USFS, and private landowners, this unique partnership works to increase our understanding of the complex natural systems on the landscape, providing their custodians with information they need to adapt to the challenges of a changing Colorado Plateau.

Newspaper Rock, a popular attraction in the Indian Creek area, is a roadside rock art panel that has been listed on the National Register of Historic Places since 1976. This site displays a significant concentration of rock art from multiple periods, etched into Wingate sandstone. The older art is attributed to the Ancestral Puebloan people who inhabited this region for 2,000 years, while the more recent rock art is attributed to the Ute people who still live in the Four Corners area.

In addition to Newspaper Rock, the Indian Creek area contains numerous other significant rock art sites, including the distinctive and well-preserved petroglyphs in Shay Canyon. The area also provides opportunities for cultural and scientific research and paleontological study. Dinosaur tracks in the bottom of the Shay Canyon stream bed are a unique visual reminder of the area's distant past. Additional paleontological resources can be found throughout the Indian Creek area, including vertebrate and invertebrate fossils, primarily in the Chinle Formation. The Indian Creek area also includes 2 prominent mesas, Bridger Jack Mesa and Lavender Mesa, which are home to relict plant communities, predominantly composed of pinyon-juniper woodland, with small, interspersed sagebrush parks, that exist only on these isolated islands in the desert sea and are, generally, unaltered by humans. These mesas provide the opportunity for comparative studies of pinyon-juniper woodland and sagebrush communities in other parts of the Colorado Plateau. Additionally, the Indian Creek area includes the exposed Chinle Formation, known for abundant fossilized flora and fauna, including pelecypods, gastropods, arthropods, fishes, amphibians, and reptiles (including dinosaurs). Finally, the area is well known for vertebrate trackways, including tetrapod footprints.

Some of the existing monument's objects, or certain examples of those objects, are not within the monument's revised boundaries because they are adequately protected by existing law, designation, agency policy, or governing land-use plans. For example, although the modified boundaries do not include the San Juan River or the Valley of the Gods, both of those areas are protected by existing administratively designated Areas of Critical Environmental Concern. Plant and animal species such as the bighorn sheep, the Kachina daisy, the Utah night lizard, and the *Eucosma navajoensis* moth are protected by the Endangered Species Act and existing land-use plans and policies protecting special-status species. Additionally, some of the range of these species falls within existing Wilderness Areas and Wilderness Study Areas.

Finally, although Hideout Canyon is likewise not included within the modified boundaries, it is generally not threatened and is partially within a Wilderness Study Area.

The areas described above are the smallest compatible with the protection of the important objects identified in Proclamation 9558. The modification of the Bears Ears National Monument will maintain and protect those objects and preserve the area's cultural, scientific, and historic legacy.

Whereas, Proclamation 9558 of December 28, 2016, designated the Bears Ears National Monument in the State of Utah and reserved approximately 1.35 million acres of Federal lands for the care and management of the Bears Ears buttes and other objects of historic and scientific interest identified therein; and

Whereas, many of the objects identified by Proclamation 9558 are otherwise protected by Federal law; and

Whereas, it is in the public interest to modify the boundaries of the monument to exclude from its designation and reservation approximately 1,150,860 acres of land that I find are unnecessary for the care and management of the objects to be protected within the monument; and

Whereas, the boundaries of the monument reservation should therefore be reduced to the smallest area compatible with the protection of the objects of scientific or historic interest as described above in this proclamation;

Now, Therefore, I, Donald J. Trump, President of the United States of America, by the authority vested in me by section 320301 of title 54, United States Code, hereby proclaim that the boundaries of the Bears Ears National Monument are hereby modified and reduced to those lands and interests in land owned or controlled by the Federal Government within the boundaries described on the accompanying map, which is attached to and forms a part of this proclamation. I hereby further proclaim that the modified monument areas identified on the accompanying map shall be known as the Indian Creek and Shash Jáa units of the monument, the latter of which shall include the Moon House and Doll House Ruins. These reserved Federal lands and interests in lands cumulatively encompass approximately 201,876 acres. The boundaries described on the accompanying map are confined to the smallest area compatible with the proper care and management of the objects to be protected. Any lands reserved by Proclamation 9558 not within the boundaries identified on the accompanying map are hereby excluded from the monument.

At 9:00 a.m., eastern standard time, on the date that is 60 days after the date of this proclamation, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law, the public and National Forest System lands excluded from the monument reservation shall be open to:

- (1) entry, location, selection, sale, or other disposition under the public land laws and laws applicable to the U.S. Forest Service;
- (2) disposition under all laws relating to mineral and geothermal leasing; and
- (3) location, entry, and patent under the mining laws.

Appropriation of lands under the mining laws before the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a

location and to initiate a right of possession are governed by State law where not in conflict with Federal law.

Nothing in this proclamation shall be construed to remove any lands from the Manti-La Sal National Forest or to otherwise revoke, modify, or affect any withdrawal, reservation, or appropriation, other than the one created by Proclamation 9558.

Nothing in this proclamation shall change the management of the areas designated and reserved by Proclamation 9558 that remain part of the monument in accordance with the terms of this proclamation, except as provided by the following 4 paragraphs:

In recognition of the importance of tribal participation to the care and management of the objects identified above, and to ensure that management decisions affecting the monument reflect tribal expertise and traditional and historical knowledge, Proclamation 9558 established a Commission to provide guidance and recommendations on the development and implementation of management plans and on management of the monument, and to partner with Federal agencies by making continuing contributions to inform decisions regarding the management of the monument. In order to ensure that the full range of tribal expertise and traditional historical knowledge is included in such guidance and recommendations, paragraph 29 of Proclamation 9558 is hereby revised to provide that the Bears Ears Commission shall be known as the Shash Jáa Commission, shall apply only to the Shash Jáa unit as described herein, and shall also include the elected officer of the San Juan County Commission representing District 3 acting in that officer's official capacity.

Proclamation 9558 is hereby revised to clarify that, pending preparation of the transportation plan required by paragraph 34 thereof, the Secretaries of the Interior and Agriculture may allow motorized and non-mechanized vehicle use on roads and trails designated for such use immediately before the issuance of Proclamation 9558 and maintain roads and trails for such use.

Paragraph 35 of Proclamation 9558 governing livestock grazing in the monument is hereby revised to read as follows: "Nothing in this proclamation shall be deemed to affect authorizations for livestock grazing, or administration thereof, on Federal lands within the monument. Livestock grazing within the monument shall continue to be governed by laws and regulations other than this proclamation."

Proclamation 9558 is amended to clarify that, consistent with the care and management of the objects identified above, the Secretaries of the Interior and Agriculture may authorize ecological restoration and active vegetation management activities in the monument.

If any provision of this proclamation, including its application to a particular parcel of land, is held to be invalid, the remainder of this proclamation and its application to other parcels of land shall not be affected thereby.

In Witness Whereof, I have hereunto set my hand this fourth day of December, in the year of our Lord two thousand seventeen, and of the Independence of the United States of America the two hundred and forty-second.

DONALD J. TRUMP

[Filed with the Office of the Federal Register, 11:15 a.m., December 7, 2017]

NOTE: This proclamation and its attached annex were published in the *Federal Register* on December 8.

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Subjects: Utah : Bears Ears National Monument.

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